

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

REC'D 21 MAR 2006

WIPO

PCT

To:
JAMES D. RYNDAK
RYNDAK & SURI LLP
200 W. MADISON ST.
SUITE 2100
CHICAGO, IL 60606

PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

Applicant's or agent's file reference 40400-12032		Date of mailing (day/month/year) 16 MAR 2006
FOR FURTHER ACTION See paragraph 2 below		
International application No. PCT/US05/35550	International filing date (day/month/year) 03 October 2005 (03.10.2005)	Priority date (day/month/year) 30 September 2005 (30.09.2005)
International Patent Classification (IPC) or both national classification and IPC IPC: A23L 2/02 USPC: 426/474, 477, 591, 599		
Applicant TROPICANA PRODUCTS, INC.		

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

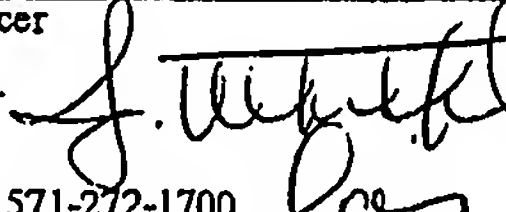
2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/ US Mail Stop PCT, Attn: ISA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (571) 273-3201	Date of completion of this opinion 24 February 2006 (24.02.2006)	Authorized officer Anthony Weier  Telephone No. 571-272-1700
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WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/US05/35550

Box No. I Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of:

- ☒ the international application in the language in which it was filed
☐ a translation of the international application into _____, which is the language of a translation furnished for the purposes of international search (Rules 12.3(a) and 23.1(b)).

2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

- ☐ a sequence listing
☐ table(s) related to the sequence listing

b. format of material

- ☐ on paper
☐ in electronic form

c. time of filing/furnishing

- ☐ contained in the international application as filed.
☐ filed together with the international application in electronic form.
☐ furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.
PCT/US05/35550

Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims <u>4, 7, 8, 11, 14, 17, and 19</u>	YES
	Claims <u>1-3, 5, 6, 9, 10, 12, 13, 15, 16, 18, and 20</u>	NO
Inventive step (IS)	Claims <u>NONE</u>	YES
	Claims <u>1-20</u>	NO
Industrial applicability (IA)	Claims <u>1-20</u>	YES
	Claims <u>NONE</u>	NO

2. Citations and explanations:

Claims 1-20 meet the criteria set out in PCT Article 33(4), and thus the juice, method of processing said juice, and the apparatus used therein all have industrial applicability because the subject matter claimed can be made or used in industry.

Claims 1-3, 5, 6, 9, 10, 12, 13, 15, 16, 18, and 20 lack novelty under PCT Article 33(2) as being anticipated by Benedict et al. Benedict et al discloses a juice preparation area and process of preparing juice including the use of an extrusion tank for transferring a juice material, said juice then being pumped in a line wherein the juice is taken through a heat exchanger for pasteurization and followed by passage to a holding tank and subsequent bottling (wherein the holding tank and bottling means are considered a part of a packaging station). In addition, Benedict et al discloses sparging (with sintered metal gas sparging head) with nitrogen the juice in the line either before or after the pasteurization treatment (e.g. Examples 4 and 5).

Claims 4, 7, 8, 14, and 17 lack an inventive step under PCT Article 33(3) as being obvious over Benedict et al. The claims differ in the particular filtering capacity of the sparger, the size of the heat exchanger surface, and the relative time and temperature conditions of pasteurization. However, determination of such limitations would have been well within the purview of a skilled artisan, and it would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived at same through routine experimental optimization.

Claims 11 and 19 lack an inventive step under PCT Article 33(3) as being obvious over Benedict et al taken together with Spencer. The claims further call for the use of at least one sparger in the passage between two tanks, another in the passage to said pasteurization station and another delivering the nitrogen at said packaging station. Benedict et al discloses sparging only once prior to or after the pasteurization means. Spencer further teaches sparging of gases (including mixtures including nitrogen) in juices may be inputted in a variety of alternative places during juice processing including during holding storage, pasteurization, etc. (see paragraph 139). Absent a showing of unexpected results, it would have been further obvious to have divided the total sparging (or nitrogen gas content) desired over various steps in the process as a matter of preference.

From the INTERNATIONAL BUREAU

PCTNOTIFICATION CONCERNING
SUBMISSION OR TRANSMITTAL
OF PRIORITY DOCUMENT

(PCT Administrative Instructions, Section 411)

To:

RYNDAK, James, D.
Ryndak & Suri LLP
200 W. Madison Street
Suite 2100
Chicago, IL 60606
ETATS-UNIS D'AMERIQUE

Date of mailing (day/month/year) 09 December 2005 (09.12.2005)	
Applicant's or agent's file reference 40400-12032	IMPORTANT NOTIFICATION
International application No. PCT/US2005/035550	International filing date (day/month/year) 03 October 2005 (03.10.2005)
International publication date (day/month/year)	Priority date (day/month/year) 01 October 2004 (01.10.2004)
Applicant TROPICANA PRODUCTS, INC. et al	

1. By means of this Form, which replaces any previously issued notification concerning submission or transmittal of priority documents, the applicant is hereby notified of the date of receipt by the International Bureau of the priority document(s) relating to all earlier application(s) whose priority is claimed. Unless otherwise indicated by the letters "NR", in the right-hand column or by an asterisk appearing next to a date of receipt, the priority document concerned was submitted or transmitted to the International Bureau in compliance with Rule 17.1(a) or (b).

2. (If applicable) The letters "NR" appearing in the right-hand column denote a priority document which, on the date of mailing of this Form, had not yet been received by the International Bureau under Rule 17.1(a) or (b). Where, under Rule 17.1(a), the priority document must be submitted by the applicant to the receiving Office or the International Bureau, but the applicant fails to submit the priority document within the applicable time limit under that Rule, the attention of the applicant is directed to Rule 17.1(c) which provides that no designated Office may disregard the priority claim concerned before giving the applicant an opportunity, upon entry into the national phase, to furnish the priority document within a time limit which is reasonable under the circumstances.

3. (If applicable) An asterisk (*) appearing next to a date of receipt, in the right-hand column, denotes a priority document submitted or transmitted to the International Bureau but not in compliance with Rule 17.1(a) or (b) (the priority document was received after the time limit prescribed in Rule 17.1(a) or the request to prepare and transmit the priority document was submitted to the receiving Office after the applicable time limit under Rule 17.1(b)). Even though the priority document was not furnished in compliance with Rule 17.1(a) or (b), the International Bureau will nevertheless transmit a copy of the document to the designated Offices, for their consideration. In case such a copy is not accepted by the designated Office as the priority document, Rule 17.1(c) provides that no designated Office may disregard the priority claim concerned before giving the applicant an opportunity, upon entry into the national phase, to furnish the priority document within a time limit which is reasonable under the circumstances.

<u>Priority date</u>	<u>Priority application No.</u>	<u>Country or regional Office or PCT receiving Office</u>	<u>Date of receipt of priority document</u>
01 October 2004 (01.10.2004)	10/956,660	US	16 November 2005 (16.11.2005)

The International Bureau of WIPO
34, chemin des Colombettes
1211 Geneva 20, Switzerland

Authorized officer

SNELL Matthew

Facsimile No. +41 22 338 82 70

Facsimile No. +41 22 338 7090

Telephone No. +41 22 338 7117